

1 **REMARKS**

2 The Applicant respectfully requests reconsideration and allowance of claims 17-21, 23-
3 26, and 28-32 in view of the above amendments and the following comments.

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5 I. THE TELEPHONE INTERVIEW

6 The Applicant appreciates the telephone interview conducted between the Examiner and
7 the Applicant's attorney, Russell Culbertson, on December 16, 2005. In the interview the
8 Applicant's attorney pointed out that the U.S. Patent No. 3,023,109 to Hines (the "Hines patent"
9 or "Hines") does not in fact disclose or suggest applying an ammonium hydroxide solution to a
10 meat product, as explained further below. The Applicant's attorney also suggested limiting the
11 claims to "adding" an ammonium hydroxide solution to the meat product. Finally, the
12 Applicant's attorney noted that an IDS filed earlier in the case had apparently been misplaced by
13 the USPTO and was not properly of record in the case. Enclosed with this response is a
14 submission under 37 C.F.R. §1.8(b) to have the IDS considered. No agreement was reached in
15 the telephone interview as to the allowability of the claims.

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17 II. STATUS OF CLAIMS

18 This application was originally filed with claims 1-16. Claims 1-16 were canceled and
19 new claims 17-33 were added in a preliminary amendment filed February 1, 2005. Claims 34-37
20 were added in an amendment filed August 22, 2005. Claims 22, 27, and 33-37 are canceled
21 above. This amendment is along the lines discussed in the telephone interview conducted
22 December 16, 2005, and described above and in the Examiner's telephone interview summary.
23 However, rather than modifying independent claim 37 with the requirement of adding an

1 ammonium hydroxide solution, that limitation is added to independent claims 17, 23, and 28, and
2 claim 37 is canceled. Claims 17-21, 23-26, and 28-32, are pending in this application after entry
3 of the above amendments.
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5 III. THE CLAIMS ARE NOT OBVIOUS IN VIEW OF THE CITED REFERENCES

6 The Examiner rejected claims 17-37 under 35 U.S.C. §103(a) as being unpatentable over
7 U.S. patent No. 5,433,142 to Roth (the "142 patent") in view of the Hines patent. The Applicant
8 respectfully submits that the claims as amended are not obvious over the 142 patent in view of
9 the Hines patent. First, there is no teaching or suggestion in the prior art to combine the
10 references as proposed by the Examiner. Second, even if the 142 patent and Hines were
11 combined as proposed by the Examiner, the resulting combination would not include each
12 element set out in the claims as amended above.

13 The Final Office Action points to Example 2 and claim 1 of the Hines patent as
14 suggesting contacting meat with aqueous ammonia to improve the color of the meat. The
15 Applicant has again carefully reviewed the Hines patent, including Example 2 and claim 1, and
16 must respectfully disagree with this contention in the Final Office Action. Example 2 of the
17 Hines patent discloses placing a thin layer of "ammonia hydroxide" in the bottom of a flask and
18 permitting the material to go to equilibrium with the atmosphere above it. The meat was then
19 "placed in the atmosphere **but not in contact with the liquid.**" (Emphasis added) (Hines, Col. 3,
20 lines 25 and 26). Similarly, claim 1 of the Hines patent describes subjecting the meat to an
21 "atmosphere" containing from 5% to 25% of ammonia for from ten seconds to five minutes.
22 Based on these sections of the Hines patent and the rest of the disclosure in Hines, the Applicant
23 submits that there is no suggestion or teaching in that reference to add an ammonium hydroxide

1 solution to a meat product. In fact, Example 2 of the Hines patent seems to indicate that
2 ammonium hydroxide should not be placed in contact with the meat.

3 The Office Action mailed April 22, 2005 and the Final Office Action indicate that it
4 would have been obvious to use ammonium hydroxide in the 142 patent since it was old to
5 contact meat with ammonium hydroxide to produce a bright red color in the meat as disclosed in
6 the Hines patent. However, considering that the Hines patent does not in fact teach or suggest
7 contacting meat with ammonium hydroxide to improve the color in the meat, Hines cannot have
8 provided a suggestion to use ammonium hydroxide in the process described in the 142 patent.
9 That is, even if the teachings of the Hines patent and the 142 patent are combined as proposed in
10 the Office Actions, the proposed combination does not teach or suggest adding an ammonium
11 hydroxide solution to the meat product as required by the independent claims.

12 Furthermore, there is no suggestion in the Hines patent to apply ammonia gas at elevated
13 pressures to a meat product. Yet the 142 patent is directed to a process that requires placing a
14 working gas and foodstuff under an elevated operating pressure, holding the elevated pressure for
15 an operating period, and then releasing the operating pressure. Absent any teaching or suggestion
16 for the combination in either the Hines patent or the 142 patent, or elsewhere in the prior art, the
17 Applicant submits that the obviousness rejection based on these two references is merely an
18 argument that it would have been obvious to try an ammonia gas atmosphere in the system
19 disclosed in the 142 patent. However, this type of "obvious to try" rationale has long been held
20 inappropriate for supporting an obviousness rejection. In re Fine 837 F.2d 1071, 5 U.S.P.Q.2d
21 1596 (Fed. Cir. 1988). Because there is no teaching or suggestion to combine the Hines patent
22 and 142 patent as proposed in the Final Office Action, the Applicant respectfully submits that the
23 obviousness rejection based on the proposed combination is improper and should be withdrawn.

1 CONCLUSION

2 For all of the above reasons, the Applicant respectfully requests reconsideration and
3 allowance of claims 17-21, 23-26, and 28-32.

4 If the Examiner should feel that any issue remains as to the allowability of these claims,
5 or that a further telephone conference might expedite allowance of the claims, the Examiner is
6 asked to telephone Applicant's attorney Russell D. Culbertson.

7 Respectfully submitted,

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9 The Culbertson Group, P.C.

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12 Dated: 12 Jan 2006

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22 CERTIFICATE OF FACSIMILE

23 I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, (Fax
24 No. 571-273-8300) on January 12, 2006.

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